

## REMARKS

Applicants have amended claim 1 to introduce language that more directly captures the point of the discussion between the Examiner and applicants in the previous Amendment and thus responds to the issues of claim construction resulted in the pending Action.

Applicants choose not to respond to the provisional double patenting rejection of claims 1, 7 and 8 at this time.

Claims 1, 2, 4-8, 13, 14 and 16 have been rejected under 35 USC 112, first paragraph, for lack of written description. Applicants respectfully traverse this rejection.

Claim 1 as amended recites a substrate layer made of a crystalline polypropylene resin and states that the substrate layer is not a heat sealable layer. The Examiner contends that the specification does not support the limitation that the substrate layer is not a heat sealable layer. Applicants respectfully disagree.

The term “substrate layer” appears 40 times in the specification, excluding the claims. None of the passages describing the substrate layer discloses or suggests that the substrate layer is a heat sealable layer. On the other hand, the term “heat sealable layer” appears 59 times in the specification, excluding the claims. None of the passages describing the heat sealable layer discloses or suggests that the heat sealable layer is a substrate layer.

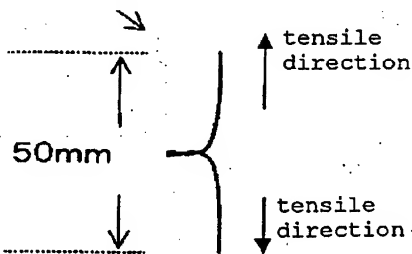
*Ariad Pharmaceutical, Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*) summarizes the written description requirement as follows:

Since its inception, this court has consistently held that § 112, first paragraph, contains a written description requirement separate from enablement, and we have articulated a “fairly uniform standard,” which we now affirm. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1562-63 (Fed. Cir. 1991). Specifically, the description must “clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.” *Id.* at 1563 (citing *In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989)). In other words, the test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date. *Id.*

Applicants have clearly distinguished the substrate layer from the heat sealable layer, as explained above. Accordingly, the disclosure of this application reasonably conveys to those

skilled in the art that applicants had possession of the claimed subject matter that includes a heat sealable layer and a substrate layer that is not a heat sealable layer, as of the filing date of this application. Under *Ariad*, the application supports the limitation that the substrate layer is not a heat sealable layer.

Furthermore, the samples for the heat sealing test were made as "central principal rafter seal shape." See paragraph [0066] of the specification. FIG. 1 of this application shows such a sample made as "central principal rafter seal shape," as follows:



As shown in this drawing, the laminate film is folded so that a portion of the heat sealable layer is in contact with another portion of the heat sealable layer. In this folded configuration, heat is applied, for sealing, to the portions of the heat sealable layer in contact with each other through the substrate layer that forms the outermost layer of the folded laminate film. Persons skilled in this art would know that if the substrate layer, which is the outermost layer of the folded laminate film, were a heat sealable layer, such a substrate layer would stick to a heat plate used for heat sealing when the laminate film is heat sealed. This would result in a failed sealing of the laminate film. Accordingly, the claimed substrate layer cannot be and is not a heat sealable layer.

The written description rejection of claims 1, 2, 4-8, 13, 14 and 16 should be withdrawn because the application supports the limitation that the substrate layer is not a heat sealable layer, as explained above.

The indefiniteness rejection of claims 1, 2, 4-8, 13, 14 and 16 should be withdrawn as well because nothing is "unclear" in the limitation of claim 1 as amended that the substrate layer is not a heat sealable layer.

Claims 1, 2, 4, 5, 7, 8, 10, 14 and 16 have been rejected under 35 USC 103(a) on U.S. Patent No. 4,726,999 (Kohyama). Applicants respectfully traverse this rejection.

Claim 1 recites the laminate film comprising a heat sealable layer, a substrate layer that is not a heat sealable layer and an intermediate layer disposed between the heat sealable layer and the substrate layer. The Examiner states that Kohyama discloses a laminate of a substrate layer and a heat sealable layer but admits that Kohyama fails to disclose the claimed three-layer structure. Nonetheless, the Examiner contends that the claimed laminate film would have been obvious over Kohyama.

The Examiner's reasoning to render claim 1 obvious in this Action is the same as her reasoning in the previous Action. First, the Examiner contends, "It would have been obvious to one having ordinary skill in the art at the time the invention was made to have disposed an additional heat seal layer on the crystalline propylene substrate layer opposite the heat seal layer disclosed by Kohyama in order to provide an additional heat sealing surface to the film so that lap seals could be formed with the film." See paragraph 19 of the Action. Then, based on this heat seal layer/substrate layer/additional heat seal layer laminate, the Examiner equates Kohyama's heat seal layer to the claimed heat sealable layer, Kohyama's substrate layer to the claimed intermediate layer and Kohyama's additional heat seal layer to the claimed substrate layer. See paragraphs 20 and 21 of the Action.

Claim 1 requires that the substrate layer not be a heat sealable layer. Accordingly, the structure proposed by the Examiner, i.e., heat seal layer/substrate layer/additional heat seal layer,

does not correspond to the claimed laminate film, because the "additional heat seal layer" proposed by the Examiner is a heat sealable layer, contrary to the claim language.

The rejection of claims 1, 2, 4, 5, 7, 8, 10, 14 and 16 under 35 USC 103(a) on Kohyama should be withdrawn because Koyama does not teach or suggest the claimed laminate film that includes a heat sealable layer, a substrate layer that is not a heat sealable layer and an intermediate layer disposed between the heat sealable layer and the substrate layer.

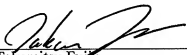
The remaining obviousness rejection relies on Kohyama and thus should be withdrawn as well because Kohyama does not provide the teachings for which it is cited.

In light of the above, a Notice of Allowance is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 358362011500.

Respectfully submitted,

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